City of Deerwood Stormwater Ordinance Provisions

1. **Authorization, Findings, Purpose, Scope, and Interpretation**
   1. **Statutory authorization**
      1. This ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes Chapter 103B and 462; Minnesota Rules 6120.2500- 6120.3900; and Minnesota Rules Chapters 8410 and 8420.
      2. This ordinance is intended to meet the current construction site erosion and sediment control and post-construction stormwater management regulatory requirements for construction activity and small construction activity (NPDES Permit) as defined in 40 CFR §122.26(b)(14)(x) and (b)(15), respectively.
      3. This ordinance is intended to meet the Minimal Impact Design Standards (MIDS) developed under Minnesota Statutes § 115.03, subd. 5c.
   2. **Findings**

The City finds that uncontrolled stormwater runoff and construction site erosion from land development and land disturbing activity can have significant adverse impacts upon local and regional water resources diminishing the quality of public health, safety, public and private property, and natural resources of the City. Uncontrolled soil erosion and stormwater runoff can:

* + 1. Threaten public health, safety, property and general welfare by increasing runoff volumes and peak flood flows and overburdening storm sewers, drainage ways and other storm drainage systems.
    2. Diminish the capacity of lakes and streams to support fish, aquatic life, and recreational and water supply uses by increasing pollutant loadings of sediment, suspended solids, nutrients, heavy metals, toxins, debris, bacteria, pathogens, biological impairments, thermal stress and other pollutants.
    3. Degrade physical stream habitat by increasing stream bank erosion, increasing stream bed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperatures.
    4. Undermine floodplain management efforts by increasing the incidence and levels of flooding.
    5. Alter wetland communities by changing wetland hydrology and increasing pollutant loads.
    6. Impact groundwater by reducing recharge and increasing potential pollutant loading.
  1. **Purpose**

The purpose of this ordinance is to establish regulatory requirements for land development and land disturbing activities aimed at minimizing the threats to public health, safety, public and private property, and natural resources within the City from construction site erosion and post-construction stormwater runoff. Specifically, the ordinance establishes regulatory requirements that:

* + 1. Meet MIDS performance goals.
    2. Assist in meeting NPDES/SDS Construction Stormwater General Permit requirements.
    3. Assist in meeting Total Maximum Daily Load (TMDL) plan wasteload allocations for impaired waters through quantification of load reductions.
    4. Protect life and property from dangers associated with flooding.
    5. Protect public and private property and natural resources from damage resulting from stormwater runoff and erosion.
    6. Ensure the annual stormwater runoff rates and volumes from post development site conditions mimic and/or reduce the annual runoff rates and volumes from predevelopment site conditions.
    7. Ensure site design minimizes the generation of stormwater and maximizes pervious areas for stormwater treatment.
    8. Provide a single, consistent set of performance goals that apply to all developments.
    9. Protect water quality from pollutant loadings of sediment, suspended solids, nutrients, heavy metals, toxics, debris, bacteria, pathogens, biological impairments, thermal stress and other pollutants.
    10. Promote infiltration and groundwater recharge.
    11. Provide vegetated corridors (buffers) to protect water resources from development.
    12. Protect functional values of all types of natural waterbodies (e.g., rivers, streams, wetlands, lakes, seasonal ponds).
    13. Sustain or enhance biodiversity (native plant and animal habitat) and support riparian ecosystems.
  1. **Scope**

As provided herein land shall not be developed for any use without providing stormwater management measures and erosion and sediment control measures that control or manage stormwater runoff from such developments.

* 1. **Greater restrictions**
     1. In case the provisions of this ordinance and requirements of other governmental organizations overlap or conflict, the strictest provisions shall apply to the permitted land disturbing and/or land development activities. In the event of any conflicts between this ordinance and Section 10.8 of the City’s Zoning Ordinance, this ordinance shall control.
     2. Relationship to Existing Easements, Covenants, and Deed Restrictions – The provisions of this ordinance are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions the provisions of this ordinance shall prevail.
  2. **Severability**

The provisions of this ordinance are severable, and if any provision of this ordinance, or application of any provision of this ordinance to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this ordinance shall not be affected thereby*.*

1. **Applicability**

As a requirement of any building permit application, any new or redevelopment of land meeting the thresholds described below requires a Stormwater Pollution Prevention Plan (SWPPP) or an Erosion and Sediment Control (ESC) Plan be completed, submitted for review, and approved by the City. Applicants will complete either a SWPPP or an ESC Plan, but not both, as described in Sections A. and B. immediately below.

* 1. **Stormwater management**

Unless otherwise exempted by this ordinance in Section 3, an approved Stormwater Management Permit including a Stormwater Pollution Prevention Plan (SWPPP) shall be required prior to any proposed land development activity that meets any of the following criteria:

* + 1. Any project that creates or fully reconstructs 6,000 square feet or more of impervious surface.
    2. All major subdivisions or minor subdivisions that are part of a common plan of development.
    3. Any project requiring a variance from the current local impervious surface zoning requirements for the property.
    4. Any land development activity, regardless of size, that the City determines is likely to cause an adverse impact to an environmentally sensitive area or other property.
  1. **Erosion and sediment control permit/plan**

Unless otherwise exempted by this ordinance in Section 3, a Grading and Filling Permit including an Erosion and Sediment Control Plan (for projects disturbing less than one acre) or a Stormwater Pollution Prevention Plan (SWPPP) (for project disturbing one or more acres) shall be required prior to any proposed land disturbing activity that meets any of the following criteria:

* + 1. Disturbs a total land surface area of between 3,000 square feet and one acre.
    2. Involves excavation or filling, or a combination of excavation and filling, in excess of 50 cubic yards of material.
    3. Involves the laying, repairing, replacing, or enlarging of an underground utility, pipe or other facility, or the disturbance of road ditch, grass swale or other open channel for a distance of 300 feet or more.
    4. Is a land disturbing activity, regardless of size, that the City determines is likely to cause an adverse impact to an environmentally sensitive area or other property, or may violate any other erosion and sediment control standard set forth in this ordinance.
  1. **Buffers**

A buffer of unmowed natural vegetation shall be required upslope of wetlands, lakes and streams prior to any proposed land development that meets any of the criteria below, unless otherwise exempted in this ordinance in Section 3: sites that have been (a) subdivided or split or (b) subject to new primary use for which a necessary rezoning, special use permit or variance has been approved.

1. **Exemptions**

The following activities shall be exempt from all of the requirements of this ordinance:

* 1. Emergency work necessary to protect life, limb, or property.
  2. Routine agricultural activity such as tilling, planting, harvesting, and associated activities. Other agricultural activities are not exempt, including construction of structures.
  3. Silvicultural activity.

1. **Plan Review Process**
   1. **Pre- application meeting**

All applicants for a Stormwater Permit shall participate in a pre-application meeting with City staff (or their authorized representative), and staff of relevant partner agencies (e.g. WCD, WMO, MDNR, etc.). The purposes of the meeting are to understand the general parameters of the proposed project and to convey the requirements the provisions of the ordinance.

* 1. **Application completeness review**

The City shall make a determination regarding the completeness of a permit application within ten (10) days of the receipt of the application and notify the Applicant in writing if the application is not complete, including the reasons the application was deemed incomplete.

* 1. **Application review**

The Applicant shall not commence any construction activity subject to this ordinance until a permit has been authorized by the City. The City will work with the necessary state, county, and local agencies to complete the review. The City shall review all information in the permit application including proposed stormwater practices, hydrologic models, and design methodologies and certify compliance with this ordinance.

* 1. **Plan authorization**

If the City determines that the application meets the requirements of this ordinance, the City may issue approval authorizing the project or activity. The approval shall be valid for one year. Approval will be in written form from the City to the Applicant.

* 1. **Plan denial**

If the City determines the application does not meet the requirements of this ordinance the application shall be denied. If the application is denied, the Applicant shall be notified of the denial in writing including reasons for the denial. Once denied, a new application must be resubmitted for approval before any activity may begin. All land use and building permits shall be suspended until the Applicant has an authorized permit*.*

* 1. **Plan information requirements**

The minimum information requirements of the application shall be consistent with the erosion and sediment control requirements in the most recent version of the NPDES/SDS Construction Stormwater General Permit and shall include a fully completed Application Checklist. The application information must also include permanent treatment information showing the proposed project meets the MIDS performance goals.

* 1. **Modification of permitted plans**

The Applicant must amend an approved ESC Plan or SWPPP to include additional information such as additional or modified BMPs designed to correct problems whenever:

* + 1. There is a change in design, construction, operation, maintenance, weather or seasonal conditions that has a significant effect on the discharge of pollutants to surface or ground water.
    2. Inspections or investigations by site operators, local, state or federal officials indicate the plans are not effectively eliminating or significantly minimizing the discharge of pollutants to surface or ground water or that the discharges are causing water quality standard exceedances.
    3. The ESC Plan or SWPPP is not achieving the general objectives of minimizing pollutants in stormwater discharges associated with construction activity.
  1. **Permit completion**

Before work under the permit is deemed complete, the permittee shall submit as-builts, a long term maintenance plan and information demonstrating that the constructed stormwater facilities conform to design specifications.

1. **Site Design and MIDS Calculator**
   1. **Site design process**

## Better Site Design

* + 1. Whenever possible, new development projects shall be designed using the Better Site Design Techniques of the current version of the Minnesota Stormwater Manual.[[1]](#footnote-1) Better Site Design involves techniques applied early in the design process to preserve natural areas, reduce impervious cover, distribute runoff and use pervious areas to effectively treat stormwater runoff. Site design should address open space protection, impervious cover minimization, and runoff distribution, minimization, and utilization through considerations such as:
       1. **Open space protection and restoration**
          1. conservation of existing natural areas (upland and wetland)
          2. reforestation
          3. re-establishment of prairies
          4. restoration of wetlands
          5. establishment or protection of stream, shoreline and wetland buffers
          6. re-establishment of native vegetation into the landscape
       2. **Reduction of impervious cover**
          1. reduce new impervious surfaces by redeveloping existing sites and reuse of existing roadways, trails etc.
          2. minimize street width, parking space size, driveway length, sidewalk width
          3. reduce impervious surface footprint (e.g. two story buildings, parking ramp)
       3. **Distribution and minimization of runoff**
          1. utilize vegetated areas for stormwater treatment (e.g. parking lot islands, vegetated areas along property boundaries, front and rear yards, building landscaping)
          2. direct impervious surface runoff to vegetated areas or to designed treatment areas (roofs, parking, and driveways drain to pervious areas, not directly to storm sewer or other conveyances)
          3. encourage infiltration and soil storage of runoff through grass channels, soil compost amendment, vegetated swales, raingardens, etc.
          4. plant vegetation that does not require irrigation beyond natural rainfall and runoff from the site
       4. **Runoff utilization**
          1. capture and store runoff for irrigation use in areas where irrigation is necessary.

## Stormwater criteria

The following general criteria shall be incorporated in site design for stormwater runoff to protect surface and ground water and other natural resources by maintaining pre-development hydrological conditions:

* + - 1. Reduce impacts on water
      2. Protect soils
      3. Preserve vegetation
      4. Decrease runoff volume
      5. Decrease erosion and sedimentation
      6. Decrease flow frequency, duration, and peak runoff rates
      7. Increase infiltration (groundwater recharge)
      8. Maintain existing flow patterns
      9. Reduce peak flows
      10. Store stormwater runoff on-site
      11. Avoid channel erosion

## Erosion and sediment control criteria

The following general criteria shall be incorporated in site design for erosion and sediment control:

* + - 1. Minimize disturbance of natural soil cover and vegetation
      2. Minimize, in area and duration, exposed soil and unstable soil conditions
      3. Protect receiving water bodies, wetlands and storm sewer inlets
      4. Protect adjacent properties from sediment deposition
      5. Minimize off-site sediment transport on trucks and equipment
      6. Minimize work in and adjacent to waterbodies and wetlands
      7. Maintain stable slopes
      8. Avoid steep slopes and the need for high cuts and fills
      9. Minimize disturbance to the surrounding soils, root systems and trunks of trees adjacent to site activity that are intended to be left standing
      10. Minimize the compaction of site soils
  1. **MIDS calculator**

Final site design and choice of permanent stormwater volume reduction practices shall be based on outcomes of the MIDS Calculator (or other model that shows the performance goal can be met) and shall meet the performance goals in Section 6 of this ordinance. The MIDS calculator is available at <http://stormwater.pca.state.mn.us/index.php/Calculator>

1. **Stormwater Volume Reduction Performance Goals**

Any applicant for a permit resulting in site disturbance that creates 6,000 Square Feet of new impervious surface or fully reconstructs one or more acre of impervious surface must meet all of the following stormwater performance goals:

* 1. **New development volume control:** For new, nonlinear developments on sites without restrictions, stormwater runoff volumes will be controlled and the post-construction runoff volume shall be retained on site for 1.1 inches of runoff from all impervious surfaces on the site.
  2. **Redevelopment volume control:** Nonlinear redevelopment projects on sites without restrictions that create or fully reconstruct impervious surfaces shall capture and retain on site 1.1 inches of runoff from the new and/or fully reconstructed impervious surfaces.
  3. **Linear development volume control:** Linear projects on sites without restrictions that create new and/or fully reconstructed impervious surfaces, shall capture and retain the larger of the following:
     1. 0.55 inches of runoff from the new and fully reconstructed impervious surfaces on the site
     2. 1.1 inches of runoff from the net increase in impervious area on the site.

Mill and overlay and other resurfacing activities are not considered fully reconstructed.

## Sites with Restrictions (as found in the MIDS Design Sequence Flowchart)

If a site has restrictions where infiltration is not feasible or advised as determined by the applicant and agreed to by the City or as determined by the City, the applicant shall follow one of the flexible treatment options (summarized in the design sequence flow chart in Appendix H).

Applicant shall attempt to fully comply with the appropriate performance goals described above. Options considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site. If full compliance is not possible due to any of the factors listed below, the Applicant shall document the reason. If site constraints or restrictions limit the full treatment goal, the following flexible treatment options shall be used:

Applicant shall document the flexible treatment options sequence starting with Alternative #1. If Alternative #1 cannot be met, then Alternative #2 shall be analyzed. Applicants must document the specific reasons why Alternative #1 cannot be met based on the factors listed below. If Alternative #2 cannot be met then Alternative #3 shall be met. Applicants must document the specific reasons why Alternative #2 cannot be met based on the factors listed below. When all of the conditions are fulfilled within an alternative, this sequence is completed.

Volume reduction techniques considered shall include infiltration, reuse and rainwater harvesting, and canopy interception and evapotranspiration and/or additional techniques included in the MIDS calculator and the Minnesota Stormwater Manual. Higher priority shall be given to BMPs that include volume reduction. Secondary preference is to employ filtration techniques, followed by rate control BMPs.

Factors to be considered for each alternative will include:

1. Shallow bedrock
2. High groundwater
3. Hotspots or contaminated soils
4. Drinking Water Source Management Areas or within 200 feet of drinking water well
5. Zoning, setbacks or other land use requirements
6. Poor soils (infiltration rates that are too low or too high, problematic urban soils)

**Alternative #1**: Applicant shall attempt to comply with and document the following conditions:

1. Achieve at least 0.55” volume reduction from all impervious surfaces if the site is new development, or from the new and/or fully reconstructed impervious surfaces for a redevelopment site.
2. Remove 75% of the annual TP load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site.
3. Options considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site.

**Alternative #2**: Applicant shall attempt to comply with and document the following conditions:

1. Achieve volume reduction to the maximum extent practicable.
2. Remove 60% of the annual TP load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site.
3. Options considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site.

**Alternative #3**: Off-site Treatment. Mitigation equivalent to the performance of 1.1 inches of volume reduction for new development or redevelopment as described above in this section, (including banking or cash) can be performed off-site to protect the receiving water body. Off-site treatment shall be achieved in areas selected in the following order of preference:

1. Locations that yield benefits to the same receiving water that receives runoff from the original construction activity.
2. Locations within the same Department of Natural Resource (DNR) catchment area as the original construction activity.
3. Locations within the next adjacent DNR catchment area upstream.
4. Locations anywhere within the City’s jurisdiction.

The MIDS Design Sequence Flowchart can be found in the Minnesota Stormwater Manual: <http://stormwater.pca.state.mn.us/index.php/Flexible_treatment_options>

1. **Stormwater Management Rate Control**
   1. For all development sites (new development, redevelopment, and linear development) the site design shall provide on-site treatment during construction and post-construction to ensure no increase in offsite peak discharge for the 1-year and 2-year, 24-hour storm events, the 10- year, 24-hour storm event, and the 100-year, 24-hour storm event. For individual building lots that are not part of a common plan of development, rate control requirements do not apply.
2. **Other Design Standards**

## Minnesota Stormwater Manual

All volume control for water quality and quantity and site design specifications shall conform to the current version of the Minnesota Stormwater Manual.

## Site erosion and sediment control requirements

All erosion and sediment control requirements shall conform to the current requirements of NPDES/SDS Construction Stormwater General Permit.

## A minimum of 20’ shall be provided on all sides of all publicly owned stormwater facilities for facility maintenance.

1. **Inspections and Maintenance**
   1. **Inspections and record keeping**
      1. **Applicant responsibilities**

The Applicant is responsible for inspections and record keeping during and after construction for all privately-owned stormwater treatment practices on the site.

* + 1. **City inspections**

The City reserves the right to conduct inspections on a regular basis to ensure that both temporary and permanent stormwater management and erosion and sediment control measures are properly installed and maintained prior to construction, during construction, and at the completion of the project. City inspections may occur at any time, including:

* + - 1. Before any land disturbing activity begins
      2. Before or during the installation of permanent stormwater treatment systems
      3. At the time of footing inspections
      4. At the completion of the project
      5. Prior to the release of financial securities
  1. **Right of entry and inspection**
     1. Powers - The issuance of a permit constitutes a right-of-entry for the City and/or its authorized representatives to enter upon the construction site. The Applicant shall allow the City and/or its authorized representatives, upon presentation of credentials, to:
        1. Enter upon the permitted site for the purpose of obtaining information, examining records, and conducting investigations or surveys;
        2. Bring such equipment upon the permitted development as is necessary to conduct such surveys and investigations;
        3. Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of the permit;
        4. Inspect the stormwater pollution control measures;
        5. Sample and monitor any items or activities pertaining to stormwater pollution control measures; and
        6. Correct deficiencies in stormwater and erosion and sediment control measures.
  2. **Fees**

Fees will be applied per City Ordinance.

* 1. **Enforcement tools/stop work orders**

The City reserve the right to issue construction stop work orders when cooperation on inspections is withheld or when a violation has been identified that needs immediate attention to protect human health and/or the environment. The following example highlights a scenario on a site where a stop work order could be utilized. If stormwater and/or erosion and sediment control management measures malfunction and breach the perimeter of the site, enter streets, other public areas, or waterbodies the City should assess the need for issuing a stop work order. The Applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-way from the adjoining property owner if necessary, and implement the cleanup and restoration plan within 48 hours. If in the discretion of the City, the Applicant does not repair the damage caused by the stormwater runoff the City can complete the remedial work required and charge the cost to the Applicant. If payment is not made within thirty days, payment will be made from the Applicant’s financial securities. An inspection by the City must follow before the construction project work can resume.

* + 1. **Construction stop work order:** The City may issue construction stop work orders until stormwater management measures meet specifications and the Applicant repairs any damage caused by stormwater runoff. An inspection by the City must verify the stormwater management measures meet the specifications before the construction project work can resume.
    2. **Other actions to ensure compliance:** The City may take any combination of the following actions in the event of a failure by Applicant to meet the terms of this ordinance:
       1. Withhold inspections or issuance of certificates or approvals.
       2. Revoke any permit issued by the City to the Applicant.
       3. Conduct remedial or corrective action on the development site or adjacent site affected by the failure.
       4. Charge Applicant for all costs associated with correcting the failure or remediating damage from the failure, if payment is not made within thirty days, payment will be made from the Applicant’s financial securities.
       5. Bring other actions against the Applicant to recover costs of remediation or meeting the terms of this ordinance.
       6. Any person, firm or corporation failing to comply with or violating any of these regulation, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. Each day that a separate violation exists shall constitute a separate offense.
  1. **Long term inspection and maintenance of stormwater facilities**
     1. **Private stormwater facilities**
        1. **Maintenance Plan Required**: No private stormwater facilities may be approved unless a maintenance plan is provided that defines who will conduct the maintenance, the type of maintenance necessary to ensure effective performance, and the maintenance intervals. At a minimum, all private stormwater facilities shall be inspected annually and maintained in proper condition consistent with the performance goals for which they were originally designed.
        2. **Facility Access**: Access to all stormwater facilities must be inspected annually and maintained as necessary. The Applicant shall obtain all necessary easements or other property interests to allow access to the facilities for inspection or maintenance for both the responsible party and the City.
        3. **Removal of Settled Materials**: All settled materials, including settled solids, shall be removed from ponds, sumps, grit chambers, and other devices, and disposed of properly.
        4. **Inspections**: All stormwater facilities within the City shall be inspected by the City during construction, during the first year of operation, and at least once every five years thereafter.
     2. **Public stormwater facilities**
        1. **Acceptance of Publicly Owned Facilities**: Before work under the permit is deemed complete; the permittee must submit as-builts and a maintenance plan demonstrating at the time of final stabilization that the stormwater facilities conform to design specifications. A final inspection shall be required before the City accepts ownership of the stormwater facilities.

1. **Financial Securities**
   1. **Amount**

The City shall require Financial Security from the Applicant in an amount sufficient to cover the entirety of the estimated costs of permitted and remedial work based on the final design as established in a set financial security schedule determined by the City.

* 1. **Release**

The Financial Security shall not be released until all permitted and remedial work is completed*.*

* 1. **Use by City**

The Financial Security may be used by the City to complete work not completed by the Applicant.

* 1. **Form of security**

The form of the Financial Security shall be one or a combination of the following to be determined by the City:

* + 1. **Cash deposit -** The first [$\_\_\_\_\_\_\_\_ ] of the Financial Security for erosion and sediment control shall be by cash deposit to the City. The cash will be held by City in a separate account.
    2. **Security deposit -** Deposit with the City, an escrow agent or trust company, at the option of the City, either:
       1. An irrevocable letter of credit, negotiable bonds of the kind approved for securing deposits of public money, or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein said financial institution pledges funds that are on deposit and guaranteed for payment.
       2. Cash in U.S. currency.
       3. Other forms and securities (e.g., disbursing agreement) as approved by the City.
  1. **City indemnity**

This Financial Security shall hold the City free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, soil or other like material within the City.

* 1. **Maintaining the financial security**

If at any time during the course of the work the balance of the Financial Security falls below 50% of the total required deposit, the Applicant shall make another deposit in the amount necessary to restore the security to the required amount. If the Applicant does not bring the financial security back up to the required amount within seven (7) days after notification by the City that the amount has fallen below 50% of the required amount the City may:

* + 1. **Withhold inspections -** Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.
    2. **Revoke permits -** Revoke any permit issued by the City to the Applicant for the site in question or any other of the Applicant’s sites within the City’s jurisdiction.
  1. **Action against the financial security**

The City may access the Financial Security for remediation actions if any of the conditions listed below exist. The City shall use the Financial Security to pay for remedial work undertaken by the City, or a private contractor under contract with the City, or to reimburse the City for all costs incurred in the process of remedial work including, but not limited to, staff time and attorney’s fees.

* + 1. **Abandonment -** The Applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
    2. **Failure to implement the SWPPP or ESC Plan** - The Applicant fails to conform to the grading plan and/or the SWPPP as approved by the City.
    3. **Failure to perform -** The techniques utilized under the SWPPP fail within one year of installation.
    4. **Failure to reimburse City -** The Applicant fails to reimburse the City for corrective action taken.
  1. **Proportional reduction of the financial security**

When more than one-third of the Applicant’s maximum exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security by one-third. When more than two-thirds of the Applicant’s maximum exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security to two-thirds of the initial amount. This reduction in financial security will be determined by the City.

* 1. **Returning the financial security**

The security deposited with the City for faithful performance of the SWPPP or the ESC Plan and any related remedial work shall be released one full year after the completion of the installation of all stormwater pollution control measures as shown on the SWPPP or ESC Plan.

* 1. **Emergency action**

If circumstances exist such that noncompliance with this ordinance poses an immediate danger to the public health, safety and welfare, as determined by the City, the City may take emergency preventative action. The City shall also take every reasonable action possible to contact and direct the Applicant to take any necessary action. Any cost to the City may be recovered from the Applicant’s financial security. In the absence of financial security, or if the security is insufficient, the City shall follow the procedure set forth in section 11 (iv)(3)(b).

1. **Enforcement Actions**

**Notification of Failure of the Permit**

The City shall notify the permit holder of the failure of the permit’s measures.

1. Initial Contact - The initial contact will be to the party or parties listed on the application and/or the SWPPP as contacts. Except during an emergency action, 48 hours after notification by the City or 72 hours after the failure of erosion and sediment control measures, whichever is less, the City at its discretion, may begin corrective work. Such notification should be in writing, but if it is verbal, a written notification should follow as quickly as practical. If after making a good faith effort to notify the responsible party or parties, the City has been unable to establish contact, the City may proceed with corrective work. There are conditions when time is of the essence in controlling erosion. During such a condition the City may take immediate action, and then notify the Applicant as soon as possible
2. Erosion Off-site - If erosion breaches the perimeter of the site, the Applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the adjoining property owner, and implement the cleanup and restoration plan within 48 hours of obtaining the adjoining property owner’s permission. Unless written approval is received from the City, corrective action shall be initiated within seven days after failure of erosion control measures. If in the discretion of the City, the permit holder does not repair the damage caused by the erosion, the City may undertake the remedial work required. Applicant shall obtain all required permits and adhere to all applicable local, state and federal regulations when restoring the site.
3. Erosion into Streets, Wetlands or Water Bodies - If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, wetlands, or other water bodies, cleanup and repair shall be immediate. The Applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.
4. Failure to do Corrective Work - When an Applicant fails to conform to any provision of this policy within the time stipulated, the City may take the following actions.
   1. Stop Work Order - Issue a stop work order, withhold the scheduling of inspections, and/or the issuance of a Certificate of Occupancy.
   2. Permit Revocation - Revoke any permit issued by the City to the Applicant for the site in question or any other of the Applicant’s sites within the City’s jurisdiction.
   3. Correction by City - Correct the deficiency or hire a contractor to correct the deficiency.
      1. The Applicant will be required to reimburse the City for all costs incurred in correcting stormwater pollution control deficiencies. If payment is not made within 30days after costs are incurred by the City, payment will be made from the Applicant’s financial securities as described in Section 8 above.
      2. If there is an insufficient financial amount in the Applicant’s financial securities as described in Section 8 above, the City may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the City, concur that the benefit to the property exceeds the amount of the proposed assessment, and waive all rights under

Minnesota Statutes Chapter 429 to challenge the amount or validity of the assessment.

1. **Definitions**

Words or phrases used in this ordinance shall have the meanings as defined by Appendix B of the Minnesota Construction Stormwater Permit No: MN R100001 (Construction Permit) available at [http://www.pca.state.mn.us/wfhya5b:](http://www.pca.state.mn.us/wfhya5b)

If not defined in the Construction Permit, then words or phrases shall be interpreted to have the meaning they have in common usage. Words or phrases shall be interpreted so as to give this ordinance its most reasonable application.

For the purpose of this ordinance, the words “must,” “shall,” and “will” are mandatory and not permissive.

* 1. **“Applicant”** means the owner of land submitting an application under the provisions of this ordinance for a stormwater and/or erosion control permit to be issued by the City.
  2. **“Best management practices (BMPs)”** means the most effective and practicable means of erosion prevention and sediment control, and water quality management practices that are the most effective and practicable means to control prevent, and minimize degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, pollution prevention through good housekeeping, and other management practices published by state or designated area-wide planning agencies.
  3. **“Better Site Design”** means the control and management of stormwater quantity and quality through the application of Better Site Design Techniques as outlined in the current version of the Minnesota Stormwater Manual: <http://stormwater.pca.state.mn.us/index.php/Main_Page>Better Site Design includes: preservation of natural areas; site reforestation; stream and shoreland buffers; open space design; disconnection of impervious cover; rooftop disconnection; grass channels; stormwater landscaping; compost and amended soils; impervious surface reduction; and trout stream protection.
  4. **“Common plan of development or sale”** means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.
  5. **“Construction activity”** includes construction activity as defined in 40 CFR pt. 122.26(b)(14)(x) and small construction activity as defined in 40 CFR pt. 122.26(b)(15) and construction activity as defined by Minn. R. 709.0080, subp. 4. This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity include clearing, grading, filling, and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more. Construction activity does not include a disturbance to the land of less than five acres for the purpose of routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
  6. **“Development, new”** Any development that results in the conversion of land that is currently prairie, agriculture, forest, or meadow and has less than 15% impervious surface. Land that was previously developed, but now razed and vacant, will not be considered new development.
  7. **“Dewatering”** means the removal of surface or ground water to dry and/or solidify a construction site to enable construction activity. Dewatering may require a Minnesota Department of Natural Resources (DNR) water appropriation permit, and if dewatering water is contaminated, discharge of such water may require an individual MPCA NPDES/SDS permit.
  8. **“Energy dissipation”** means methods employed at pipe outlets to prevent erosion caused by the rapid discharge of water. Examples include, but are not limited to concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion.
  9. **“Erosion prevention”** means measures employed to prevent erosion. Examples include but not limited to soil stabilization practices, limited grading, mulch, temporary erosion protection or permanent cover, and construction phasing.
  10. **“General contractor”** means the party who signs the construction contract with the owner or operator to construct the project described in the final plans and specifications. Where the construction project involves more than one contractor, the general contractor could be the party responsible for managing the project on behalf of the owner or operator. In some cases, the owner or operator may be the general contractor. In these cases, the owner may contract with an individual as the operator who would become the co-permittee.
  11. **“Green Infrastructure”** means a wide array of practices at multiple scales that manage wet weather and that maintains or restores natural hydrology by infiltrating, evapotranspiring, or harvesting and using stormwater. On a regional scale, green infrastructure is the preservation or restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies that reduce overall imperviousness in a watershed. On a local scale, green infrastructure consists of site and neighborhood-specific practices, such as bioretention, trees, green roofs, permeable pavements and cisterns.
  12. **“Impervious Surface”** means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.
  13. **“Land Disturbance”** means any activity that result in a change or alteration in the existing ground cover (both vegetative and non- vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, stockpiling, excavation , and borrow pits.

Routine vegetation management, and mill and overlay/resurfacing activities that do not alter the soil material beneath the pavement base, are not considered land disturbance. In addition, other maintenance activities such as catch basin and pipe repair/replacement, lighting, and pedestrian ramp improvements shall not be considered land disturbance for the purposes of determining permanent stormwater management requirements.

* 1. **“Linear Project”** means construction or reconstruction of roads, trails, sidewalks, and rail lines that are not part of a common plan of development or sale. Mill, overlay and other resurfacing projects are not considered to be reconstruction.
  2. **“National Pollutant Discharge Elimination System (NPDES)”** means the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.
  3. **“Normal wetted perimeter”** means the area of a conveyance, such as a ditch, channel, or pipe that is in contact with water during flow events that are expected to occur from a two-year 24 hour, storm event.
  4. **“Notice of termination”** means notice to terminate coverage under apermit after construction is complete, the site has undergone final stabilization, and maintenance agreements for all permanent facilities have been established, in accordance with all applicable conditions of apermit.
  5. **“Operator”** means the person designated by the owner who has day to day operational control and/or the ability to modify project plans and specifications related to the SWPPP. The operator must be named on the permit as the Permittee.
  6. **“Owner”** means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease, easement, or mineral rights license holder, the party or individual identified as the lease, easement or mineral rights license holder; or the contracting government agency responsible for the construction activity.
  7. **“Permanent cover”** means surface types that will prevent soil failure under erosive conditions. Examples include: gravel, asphalt, concrete, rip rap, roof tops, perennial cover, or other landscaped material that will permanently arrest soil erosion. A uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a density of 70% of the native background vegetative cover for the area must be established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures. Permanent cover does not include the practices listed under temporary erosion protection.
  8. **“Permittee”** means a person or persons, firm, or governmental agency or other entity that signs the permit application and is responsible for compliance with the terms and conditions of the permit.
  9. “**Public waters”** means all water basins and watercourses that are described in Minn. Stat. 103G.005 subd. 15.
  10. **“Redevelopment”** means any development that is not considered new development.
  11. **“Retain”** means manage stormwater on site using a low-impact development approach so that the rate and volume of predevelopment stormwater reaching receiving waters is unchanged.
  12. **“Saturated soil”** means the highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.
  13. **“Sediment control”** means methods employed to prevent sediment from leaving the site. Sediment control practices include: silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, bio rolls, rock logs, compost logs, storm drain inlet protection, and temporary or permanent sedimentation basins.
  14. **“Small construction activity”** means small construction activity as defined in 40 CFR part 122.26(b)(15). Small construction activities include clearing, grading and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.
  15. **“Stabilized”** means exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90 percent ground coverage (typically 2 ton/acre).
  16. **“Standard plates”** means general drawings showing a common or repeated construction activity or practice.
  17. **“Stormwater”** is defined under Minn. R. 7077.0105, subp. 41(b), and includes precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage.
  18. **“Stormwater Pollution Prevention Plan”** (SWPPP) means a plan for stormwater discharge that includes erosion prevention BMPs, sediment control BMPs and permanent stormwater management systems that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.
  19. **“Surface water or waters”** means all streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.
  20. **“Temporary erosion protection”** means methods employed to prevent erosion during construction activities. Examples of temporary erosion protection include: straw, wood fiber blanket, wood chips, vegetation, mulch and rolled erosion control products.
  21. **“Underground waters (Groundwater)”** means water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground. The term groundwater shall be synonymous with underground water.
  22. **“Waters of the State”** (as defined in Minn. Stat. § 115.01, subd. 22) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.
  23. **“Wetland” or “Wetlands”** is defined in Minn. R. 7050.0130, subp. F and includes those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. Wetlands must have the following attributes:
  24. A predominance of hydric soils.
  25. Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence oof hydrophytic vegetation typically adapted for life in a saturated soil condition.
  26. Under normal circumstances support a prevalence of such vegetation.

1. Available at <http://stormwater.pca.state.mn.us/index.php/Better_site_design>. [↑](#footnote-ref-1)